

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 KURT ANGELONE,

6 Plaintiff(s),

7 v.

8 PATRICK GLEBE,

9 Defendant(s).

NO. C09-1103MJP

ORDER ADOPTING REPORT AND
RECOMMENDATION

10 The above-entitled Court, having received and reviewed

- 11 1. Report and Recommendation (Dkt. No. 22)
- 12 2. Petitioner's Objections to the Magistrate's Report and Recommendation (Dkt. No. 23)
- 13 3. Petitioner's Addendum to His Objections to the Magistrate's Report and
- 14 Recommendation (Dkt. No. 24)

15 and all attached declarations and exhibits and the remainder of the record, makes the following

16 ruling:

17 IT IS ORDERED that the recommendation of the Magistrate Judge is ADOPTED;

18 Petitioner's motion for discovery and a stay (Dkt. No. 14) is DENIED, Petitioner's habeas petition is

19 DENIED and this action is DISMISSED with prejudice.

20 The procedural facts of this matter are fully described in the Report and Recommendation; the

21 Court will not repeat them here. They establish, beyond a doubt, that Petitioner's filings in state

22 court to appeal his conviction and his sentence were beyond the statute of limitations and subject to

23 dismissal because they were untimely.

24 Federal law, in turn, clearly holds that a state post-conviction petition rejected by the state

25 court as untimely is not "properly filed" within the meaning of the federal Antiterrorism and


1 Effective Death Penalty Act of 1996 (28 U.S.C. § 2244) (Pace v. DiGuglielmo, 544 U.S. 408, 410
2 (2005)). Petitioner thus has no recourse from his untimely state court filings through the federal
3 court system.

4 Although the federal statute of limitations is subject to equitable tolling (Laws v. Lamarque,
5 351 F.3d 919, 922 (9th Cir. 2003), that remedy is available “only when extraordinary circumstances
6 beyond a prisoner’s control make it impossible to file a petition on time and the extraordinary
7 circumstances were the cause of his untimeliness.” Id. (internal quotation marks and citation
8 omitted). Likewise, if some new facts hitherto unavailable to a petitioner come to light, those may be
9 plead as grounds for tolling of the statute. None of the circumstances which Petitioner lays out as the
10 grounds for his appeal (his innocence, the coercive nature of his plea, the legal improprieties in his
11 “third strike” sentencing) constitute “extraordinary circumstances” beyond his control, or new factual
12 information which he could not have produced in a more timely fashion.

13 The Court is compelled by law to adopt the recommendation of the Magistrate Judge, deny
14 Petitioner’s appeal and dismiss his matter with prejudice.

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16 The clerk is ordered to provide copies of this order to Petitioner, all counsel and to Judge
17 Theiler.

18 Dated: December _ 16_, 2009

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20 
21 Marsha J. Pechman
22 U.S. District Judge
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